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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/11/32/2023

Decision[1] of the 105th Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Joint Venture between Public Investment Fund and Pirelli Tyre S.p.A.

ECONOMIC SECTOR: Manufacturing (Tyres)

COMESA COMPETITION COMMISSION
11 MAR 2024

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[1] In the published version of this decision, some information has been omitted pursuant to Rule 73 of the COMESA Competition Rules concerning non-disclosure of business secrets and other confidential information. Where possible, the information omitted has been replaced by ranges of figures or a general description.

The Committee Responsible for Initial Determinations,

Cognisant of Article 55 of the Treaty establishing the Common Market for Eastern and Southern Africa (the "**COMESA Treaty**");

Having regard to the COMESA Competition Regulations of 2004 (the "**Regulations**"), and in particular Part 4 thereof;

Mindful of the COMESA Competition Rules of 2004, as amended by the COMESA Competition [Amendment] Rules, 2014 (the "**Rules**");

Conscious of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation of 2015;

Recalling the overriding need to establish a Common Market;

Recognising that anti-competitive mergers may constitute an obstacle to the achievement of economic growth, trade liberalization and economic efficiency in the COMESA Member States;

Considering that the continued growth in regionalization of business activities correspondingly increases the likelihood that anti-competitive mergers in one Member State may adversely affect competition in another Member State,

Desirability of the overriding COMESA Treaty objective of strengthening and achieving convergence of COMESA Member States' economies through the attainment of full market integration,

Having regard to the COMESA Merger Assessment Guidelines of 2014,

Determines as follows:

Introduction and Relevant Background

1. On 23 January 2024, the COMESA Competition Commission (the "**Commission**") received notification for approval of the proposed establishment of a tyre manufacturing joint venture ("**JV Company**") between Public Investment Fund ("**PIF**") and Pirelli Tyre S.p.A. ("**Pirelli**"), pursuant to Article 24(1) of the Regulations.

2. Pursuant to Article 26 of the Regulations, the Commission is required to assess whether the transaction between the parties would or is likely to have the effect of substantially preventing or lessening competition or would be contrary to public interest in the Common Market.

3. Pursuant to Article 13(4) of the Regulations, there is established a Committee Responsible for Initial Determinations, referred to as the CID. The decision of the CID is set out below.

The Parties

PIF

4. PIF is the Saudi Arabian sovereign wealth fund, established in Riyadh, Kingdom of Saudi Arabia ("**KSA**"), in 1971. PIF has direct and indirect investments in a number of sectors across KSA and globally, including food and agriculture, energy, financial sector, manufacturing, real estate, logistics and digital sectors.

5. In the Common Market, PIF mainly generates its turnover from mining activities, as well as, to a minor extent, banking services. Table 1 below provides an overview of the business activities conducted in each relevant COMESA Member State.

Table 1: Activities carried out by PIF in the Common Market

Member State	Business Activity
Egypt	Banking Mining
Kenya	Mining
Libya	Banking
Malawi	Mining
Mauritius	Mining
Tunisia	Mining
Zambia	Mining
Zimbabwe	Mining

Pirelli

6. Pirelli is part of the Pirelli Group, with its holding company being Pirelli & C. S.p.A., whose origins date back in 1872 and operates, with its subsidiaries, as an Italian multinational tyre manufacturer and supplier (collectively, Pirelli & C. S.p.A. and its subsidiaries are referred to as the "**Pirelli Group**"). Pirelli is focused on the manufacture and supply of tyres for cars, motorcycles and bicycles as well as provision of associated services.

7. In the Common Market, Pirelli, through its affiliates, has a corporate presence only in Egypt. The company makes sales of various products into additional Member States, details of which are provided in the following table:

Table 2: Activities carried out by Pirelli in the Common Market

Member State	Business Activities
Democratic Republic of Congo	Replacement tyres for cars and vans
Egypt	Replacement tyres for cars and vans Replacement tyres for two-wheeled motorised vehicles

Kenya	Replacement tyres for cars and vans
Madagascar	Replacement tyres for cars and vans Replacement tyres for two-wheeled motorised vehicles
Malawi	Replacement tyres for cars and vans
Mauritius	Replacement tyres for cars and vans Replacement tyres for two-wheeled motorised vehicles Replacement tyres for two-wheeled non-motorised vehicles
Tunisia	Replacement tyres for cars and vans Replacement tyres for two-wheeled motorised vehicles
Uganda	Replacement tyres for cars and vans
Zambia	Replacement tyres for cars and vans
Zimbabwe	Replacement tyres for cars and vans Replacement tyres for two-wheeled motorised vehicles

The JV Company

8. The Parties intend to form the JV Company as soon as, *inter alia*, all necessary approvals, including the approval by the Commission, will be obtained. The JV Company will operate as a separate, autonomous legal entity on a long-term basis.

9. The initial duration of the JV Company has been determined to be a period of [redacted][2]. The business of the JV Company, and the objective for which it is formed, is to establish and operate a plant in the KSA for the production and sale of certain tyres for sport utility vehicles and passenger cars bearing a new trademark owned by the JV Company ("**Roll Products**"), as well as the production of PCR Tyres to be sold to Pirelli and/or its affiliates, bearing the "PIRELLI" trademark ("**Pirelli Products**"), according to an offtake agreement to be signed at closing.

10. The Roll Products will be sold by the JV Company to Original Equipment Manufacturer and replacement tyres markets primarily in the KSA, and certain countries in the GCC and Middle East and North Africa (MENA) region[3] as set out in the Joint Venture Agreement. The Pirelli Products will be sold by the JV Company solely to Pirelli and/or its affiliates which will in turn sell such Pirelli Products to Original Equipment Manufacturer and replacement tyres markets primarily in the MENA region.

[2] Information claimed as confidential by the merging parties.
[3] The relevant countries include the KSA, the Kingdom of Bahrain, the State of Kuwait, the Sultanate of Oman, the State of Qatar, the United Arab Emirates, the Hashemite Kingdom of Jordan, the Lebanese Republic, the Arab Republic of Egypt, the Republic of Tunisia, the People's Democratic Republic of Algeria, and the Kingdom of Morocco.

11. [redacted]

12. Post-closing, the parties' shareholdings in the JV Company will be: (i) Pirelli 25% and (ii) PIF 75%.

13. The parties will exercise joint control over the JV Company. Both at the level of the Board of Directors (the "**Board**") and at the shareholders' level, certain strategic matters (reserved matters) will require unanimous approval at respectively the Board and the shareholders' level. In addition, both parties will have the ability to appoint the Board Directors and quorum will require presence of a certain minimum number of Board Directors nominated by each party. Board decisions on reserved matters will require the unanimous approval of all Board Directors.

14. In view of the foregoing, the parties will have joint control over the JV Company within the meaning of the Regulations.

Jurisdiction of the Commission

15. Article 24(1) of the Regulations requires 'notifiable mergers' to be notified to the Commission. Rule 4 of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation (the "**Merger Notification Thresholds Rules**") provides that:

> *Any merger, where both the acquiring firm and the target firm, or either the acquiring firm or the target firm, operate in two or more Member States, shall be notifiable if:*
>
> a) *the combined annual turnover or combined value of assets, whichever is higher, in the Common Market of all parties to a merger equals or exceeds USD 50 million; and*
>
> b) *the annual turnover or value of assets, whichever is higher, in the* Common Market of each of at least two of the parties to a merger equals *or exceeds USD 10 million, unless each of the parties to a merger achieves at least two-thirds of its aggregate turnover or assets in the Common Market within one and the same Member State.*

16. The undertakings concerned have operations in two or more Member States. The undertakings concerned derive turnover of more than the threshold of USD 50 million in the Common Market and they each derive turnover of more than USD 10 million in the Common Market. In addition, the parties do not derive more than two-thirds of their

respective aggregate turnover in one and the same Member State. The notified transaction is therefore notifiable to the Commission within the meaning of Article 23(5)(a) of the Regulations.

Details of the Merger

17. The proposed transaction involved the establishment of a greenfield joint venture between PIF and Pirelli for the purpose pursuing the establishment and operation of a plant for the manufacturing of certain PCR Tyres.

18. The parties submitted that the establishment of the JV Company meets the interest of PIF to implement a plan for the development of an automotive district in the KSA and falls within the scope of Pirelli's strategy of enlarging its manufacturing sources to the Great Arab Free Trade Area region in the framework of its global approach to enhance "local for local" operations.

COMPETITION ASSESSMENT

Consideration of the Relevant Markets

Relevant Product Market

19. Paragraph 7 of the Commission's Guidelines on Market Definition states that a *"relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer/customer, by reason of the products' characteristics, their prices and their intended use".*

20. As indicated above, the JV Company is a greenfield joint venture and, as such, does not supply any products or services currently. It is intended that the JV Company will produce PCR Tyres.

21. The CID considered that the tyre market could be segmented along several dimensions. The CID previously distinguished between (i) the sale of tyres to Original Equipment Manufacturers ("**OEM**") and (ii) the sale of new replacement tyres to other distribution channels[4]. OEM tyres are sold directly from the tyre manufacturer to the

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[4] Case File No. CCC/MER/06/23/2019, The Joint Venture involving CFAO and CompagnieFinanciere Michelin SCmA. Similar distinctions were made in the European Commission's decisions in Case COMP/M.7864 – Trelleborg/ CGS Holding (2016), paragraph 10; Case COMP/M.7911 – CNCE / KM Group (2016), paragraph 25; Case COMP/M.7643 – CNRC / Pirelli (2015), paragraph 23; Case COMP/M.3081 – Michelin / Viborg (2003), paragraphs 8-9. The CID observed that the EC also identified a third type of tyre, re-treaded tyre. When OEM tyres on a vehicle can no longer be used, they can be replaced by a new replacement tyre or a re-treaded tyre. Re-treading is a process that applies a new tread to a worn tyre thus ensuring an extended life. In past EC decisions, it was held that while re-treaded tyres

vehicle manufacturer without passing through an intermediary for installation on new vehicles. With regard to replacement tyres, although tyre manufacturers can supply major accounts directly, the vast majority of replacement tyres are sold through specialised outlets or tyre dealers who obtain their supplies from the manufacturer through its wholesale operations. The intermediaries in this market are usually specialised tyre dealers or dealers that, together with the retailing of tyres, perform a wide range of other services connected to the maintenance of vehicles.

22. Moreover, within each of the OEM and replacement tyre categories, it is possible to distinguish sub product markets according to the specific characteristics and dimensions of the vehicles on which tyres have to be fitted. PCR tyres are aimed at fitting sport utility vehicles and passenger cars. The CID previously found that PCR tyres are distinct from tyres for other types of vehicles (such as light trucks and buses; earth moving vehicles; agricultural vehicles; or two wheelers)[5].

23. From a demand side perspective, the CID considered that it was unlikely that end consumers would be able to switch between tyres under the different categories in the event of a small but non-transitory increase in prices. The inability to switch between tyres belonging to distinct product markets is related to the different product characteristics (notably dimensions) and the different usage and applications of these tyres. For instance, a tyre manufactured to be fitted on an earth moving vehicle will not fit on a passenger car given the different dimensions of these vehicles and the different needs they have when being operated. Further, it was observed that the wide majority of tyre manufacturers are normally active on some but not all of the different vehicle categories. The constraints from a supply-side perspective were confirmed in ***TRELLEBORG/CGS HOLDING*** and ***CNRC/PIRELLI***, where the European Commission's investigations established that "*tyre manufacturers are unlikely to be able to switch their production from one product market to another in the short-term, without incurring significant additional costs or risks. Specific production facilities and moulds are needed to manufacture tyres belonging to different product markets and high investments are necessary to become an effective competitor on a specific tyre product market, thus making supply substitution unlikely between tyres destined for different categories of vehicles*"[6].

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may exert a degree of competitive pressure over new replacement tyres, significant quality and price differences (the cost per kilometre of use of a low-priced tyre is more expensive as that of a re-treaded tyre) have consistently led to the conclusion that re-treaded tyres constitute a distinct product market from that of new replacement tyres. Considering that the activities of the JV Company will be limited to the production of (new) PCR Tyres and not involve any re-treading, the market for re-treaded tyres has not been analysed further in this report.

[5] Case File No. CCC/MER/06/23/2019, The Joint Venture involving CFAO and CompagnieFinanciere Michelin SCmA.

[6] Paragraph 28 of the EC's decision in Case No M.7643 - CNRC /PIRELLI, dated 01/07/2015; and EC's decision in Case M.7864 - TRELLEBORG / CGS HOLDING, dated 04/05/2016.

24. The above was confirmed by the merging parties who submitted that on the supply-side, tyre manufactures would not be able to switch production from one product market to another in the short-term, without incurring significant additional costs or risks. This is due to the fact that specific production facilities and moulds are needed to manufacture tyres belonging to different product markets and high investments are necessary to become an effective competitor on a specific tyre product market.

25. On the basis of the foregoing assessment, and without prejudice to the CID's approach in future cases, the relevant product markets were construed as:

a) production and supply of OEM tyres for SUVs and passenger cars; and

b) production and supply of new replacement tyres for SUVs and passenger cars.

Relevant Geographic Market

26. The Commission's Guidelines on Market Definition define the relevant geographic market as follows:

> ***"The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas"*** [7].

27. The CID considered that the market for OEM tyres was at least COMESA wide and even global as manufacturers are able to supply their products beyond national borders, whilst the market for replacement tyres is generally national and requires distribution to be organised through national channels. International tyre manufacturers predominantly use local distributors to distribute their brands. As a result of these local distribution networks, the various brands mainly compete with the brands present (whether local or imported) within the territory. In ***BAIN CAPITAL / REIFEN KRIEG GROUP***[8], the market investigations carried out by the European Commission established that the vast majority of the customers purchase only to a limited extent replacement tyres from outside Germany (where the parties operated). In ***CNC/Pirelli***[9], it was further found that while there are no major barriers to operate in the different European countries', certain conditions of competition, including prices, are still reported to vary across countries, for instance, prices are determined

[7] Paragraph 8.
[8] Case M.9000 - BAIN CAPITAL / REIFEN KRIEG GROUP
[9] Case No M.7643 - CNRC / PIRELLI

according to country-specific supply and demand factors as well as endogenous conditions created by companies' specific investments.

28. Whilst the CID did not conduct a customer preference survey in this case, in view of the absence of overlap in the activities of the merging parties pre-merger, it could be reasonably construed that a similar finding is likely to hold for the Common Market, having regard to the higher divergences in national preferences and geographic proximity of markets.

29. For purposes of the present case, the CID considered that the national geographic markets were Egypt and Tunisia, being the Member States within which the JV Company intends to operate in the Common Market.

30. The relevant markets were therefore construed as:

    a) ***Global production and supply of OEM tyres for SUVs and passenger cars;***

    b) ***Production and supply of new replacement tyres for SUVs and passenger cars in Egypt; and***

    c) ***Production and supply of new replacement tyres for SUVs and passenger cars in Tunisia.***

Market Shares and Concentration

31. It is recalled that the JV Company is a greenfield joint venture, and as such does not have any market share. It was further noted that PIF was not active in the relevant markets pre-merger, as such the transaction will not bring any market share accretion. Nonetheless, for purposes of assessing the ability of the transaction to raise foreclosure concerns, the CID considered the market share of Pirelli in the relevant markets.

32. The parties provided the following market share estimates in relation to the production and supply of new RTs for cars and vans in Egypt and Tunisia:

Table 3: Market for the production and supply of new RTs for cars and vans in Egypt and Tunisia[10]

Geographic Market	**Competitor**	**2022 Estimated Market Share**
Egypt	***Pirelli***	***[0-10]%***
	Lassa	[20-30]%
	Kuhmo	[10-20]%

[10] Information claimed as confidential by the merging parties.

COMESA COMPETITION COMMISSION
11 MAR 2024

	Petlas	[0-10]%
	Bridgestone	[0-10]%
	Hankook	[0-10]%
	Goodyear	[0-10]%
	Continental	[0-10]%
	Michelin	[0-10]%
	Others	[10-20]%
	Total	**100%**
Tunisia	***Pirelli***	[0-10]%
	Kuhmo	[0-10]%
	Nexen	[0-10]%
	Bridgestone	[0-10]%
	Falken	[0-10]%
	Michelin	[0-10]%
	Others	[80-90]%
	Total	**100%**

33. As seen in Table 3, Pirelli had a relatively low market share in the relevant markets in Egypt and Tunisia. Further, Pirelli was not active in the OEM market in Egypt and Tunisia pre-merger. These being the only Member States where the JV Company will operate in the Common Market, it was observed that the transaction will not lead to any market share accretion in any of the relevant markets identified.

34. The CID considered that the transaction was unlikely to result in unilateral effects as competing cars tyre manufacturers and suppliers would continue to exercise an effective competitive constraint on Pirelli and the JV Company once it becomes operational.

35. The CID considered whether the transaction may give the merging parties the ability and incentive to foreclose the access of customers of new RTs for cars and vans to Pirelli's tyres, to protect the market share of the JV Company. In view of the relatively low market shares of Pirelli pre-merger in Egypt and Tunisia, the CID considered that such a foreclosure strategy would neither be feasible nor economically viable for the merging parties. Notably, customers and consumers of new RTs for passenger cars and SUVs in Egypt and Tunisia would continue to have alternative sources of supply (collectively accounting for approximately [80-90]% of the market in Egypt[11], and [80-90]%[12] of the market in Tunisia).

[11] Information claimed as confidential by the merging parties.
[12] Information claimed as confidential by the merging parties.

36. Further the transaction would not lead to the removal of any player from the relevant markets. As a result, the transaction would not contribute to creating or enhancing conditions for sustainable coordinated action amongst the market players.

Consideration of Third Party Views

37. In arriving at its determination, the CID also considered the submissions made by the national competition authorities of Kenya, Malawi and Zimbabwe, which confirmed that the transaction was not likely to raise any competition concerns.

Determination

38. The CID determined that the merger is not likely to substantially prevent or lessen competition in the Common Market or a substantial part of it, nor will it be contrary to public interest. The CID further determined that the transaction is unlikely to negatively affect trade between Member States.

39. The CID, therefore, approved the transaction.

40. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 11th day of March 2024

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma **Commissioner Islam Tagelsir Ahmed Alhasan**